MOTION FILED
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No. 79-1320

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

RAYMOND KASSEL, ET AL., *Appellants,*

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A Delaware Corporation, *Appellee.*

On Appeal from the United States Court of Appeals for the Eighth Circuit

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF THE ASSOCIATION OF AMERICAN RAILROAD AS *AMICUS CURIAE*

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The Association of American Railroads respectfully moves for leave to file the attached brief as *amicus curiae.* The brief supports the appeal of Raymond Kassel, *et al.*, appellants, and urges that the decision of the Court of Appeals be reversed. Requests for consent by the parties to the filing of this brief were granted by appellants but denied by appellee.

The Association of American Railroads is an unincorporated trade association whose members comprise almost all of the Nation's Class I railroads. These members are listed in the appendix to this motion. In addition to the Class I railroads, the Association represents the interests of several hundred smaller railroads, terminal companies, and switching lines. The Association's members operate 92 percent of the trackage, employ 94 percent of the workers, and generate 97 percent of the freight revenues of all railroads in the United States. Six Class I railroads conduct extensive operations over 6,966 miles of track in Iowa and employ 9,292 workers within the state. More to the point, a substantial portion of all of the Nation's railroads participate in the intercity freight shipments that originate in, pass through, or terminate in Iowa. Railroad operations compete directly with the operations of appellee Consolidated Freightways and other motor carriers in the freight transportation business around which this litigation revolves.

The Association represents its members in a wide variety of matters that are of concern to many or all of them, including matters that affect competition between railroads and motor carriers. State restrictions on truck lengths and other highway vehicle regulations are a concern to the Nation's railroads, not only because highway laws, limitations, and privileges directly affect competition between railroads and trucks but also because railroads and their employees are a part of the motoring public. Railroads have always borne and will continue to bear the tremendous costs of constructing, owning, and maintaining rail rights-of-way and track structures. Appellee and all other motor carriers, however, operate over highways constructed, owned, and maintained by the States. The competitive advantage thus conferred upon motor carriers by the Nation's highway policies is substantial in terms of operating costs and ultimately the rate levels charged to shippers. The decision of the court below, if upheld, will magnify the competitive advantage of motor carriers and further cripple the ability of railroads to compete for intercity

freight. And in view of the extensive record compiled below, the decision of the court below, if upheld, will raise a substantial doubt as to the defensibility of most, if not all, of the existing State truck length limitations.

As is more fully set forth in the attached *amicus curiae* brief, the Association supports the appeal of Raymond Kassels, *et al.* The decision below misconstrues this Court's recent decision in *Raymond Motor Trans. Inc.* v. *Rice*, 434 U.S. 429 (1978), and thereby departs from a long line of cases in which this Court has consistently affirmed the right of a State, in the absence of Federal legislation, to regulate the size and the weight of vehicles operated on public highways so long as State highway regulations do not discriminate against interstate commerce. Because the Association and its members believe the decision of the court below places in doubt the validity of all truck length restrictions in each of the States, the Association fears that abilitiy of railroads to retain and increase their share of the market for intercity freight transportation will be substantially impaired. This litigation, therefore, involves matters of compelling importance to the Association and its members.

The purpose of the attached *amicus curiae* brief is to explain the significance of this case to the railroad industry and to set forth the reasons why the decision of the court below should be reversed. The arguments presented in this attached brief are intended to supplement rather than duplicate the arguments advanced by appellants, Raymond Kassels, *et al.* Because appellants, as public officials, may be restrained from vigorously promoting the inherent advantages of rail transportation over competing modes of transportation, the Association believes its arguments will be helpful to this Court in its consideration of the appeal of Raymond Kassels, *et al.* For these reasons, the Association has filed this motion

and respectfully urges that leave to file the attached *amicus curiae* brief be granted.

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APPENDIX

Members of the Association of American Railroads

Akron, Canton & Youngstown Railroad Co.
Alton & Southern Railway Co.
Atchison, Topeka & Santa Fe Railway Co.
    Los Angeles Junction Railway
    Illinois Northern Railway
Atlanta & St. Andrews Bay Railway Co.
Baltimore & Ohio Railroad Co.
    Curtis Bay Railroad Co.
    Staten Island Railroad Corporation
Baltimore & Ohio Chicago Terminal Railroad Co.
Bangor & Aroostook Railroad Co.
    Van Buren Bridge Railroad
Belt Railway Company of Chicago
Bessemer & Lake Erie Railroad Co.
Boston & Maine Corporation
Buffalo Creek Railroad
Burlington Northern Incorporated
    Oregon Electric Railway
    Oregon Trunk Railway
    Walla Walla Valley Railway
Cambria & Indiana Railroad Co.
Canadian Pacific Limited
    Aroostook Valley Railroad
    Canadian Pacific Lines in Maine
    Canadian Pacific Lines in Vermont
Chesapeake & Ohio Railway Co.
    Covington & Cinn. Elev. Railroad & Transfer & Bridge Co.
Chicago & Eastern Illinois Railroad
    Chicago Heights Terminal Transfer Co.
Chicago & Illinois Midland Railway Co.
Chicago & North Western Transportation Co.
Chicago & Western Indiana Railroad Co.
Chicago, Milwaukee, St. Paul & Pacific Railroad
    Washington, Idaho & Montana Railway Co.

Clinchfield Railroad Co.
Colorado & Southern Railway Co.
Consolidated Rail Corporation
Delaware & Hudson Railway Co.
    Greenwich & Johnsonville Railway Co.
Denver & Rio Grande Western Railroad Co.
Detroit & Mackinac Railway Co.
Detroit & Toledo Shore Line Railroad Co.
Duluth, Missabe & Iron Range Railway Co.
Elgin, Joliet & Eastern Railway Co.
Fort Worth & Denver Railway Co.
Galveston, Houston & Henderson Railroad
Georgia Railroad
Grand Trunk Lines
    Grand Trunk
        Central Vermont Railway, Inc.
        Duluth, Winnipeg & Pacific Railway
    Canadian National Railways
        Lines in Michigan
        Lines in New England
        Lines in New York
        Lines in Vermont
        Minnesota & Manitoba Railroad (Leased Line)
    Detroit, Toledo & Ironton Railroad Co.
Green Bay & Western Railroad Co.
Houston Belt & Terminal Railway Co.
Illinois Central Gulf Railroad
    Chicago & Illinois Western Railroad Co.
    Waterloo Railroad
Kansas City Southern Railway Co.
    Arkansas & Western Railway Co.
    Fort Smith & Van Buren Railway Co.
    Kansas & Missouri Railway & Terminal Co.
Kentucky & Indiana Terminal Railroad
Lake Superior & Ishpeming Railroad
Louisiana & Arkansas Railway Co.
Louisville & Nashville Railroad Co.
    Carrollton Railroad Co.

McCloud River Railroad Co.
Maine Central Railroad Co.
    Portland Terminal Co.
Manufacturers Railway Co.
Minneapolis, Northfield & Southern Railway Co.
Missouri-Kansas-Texas Railroad Co.
    Beaver, Meade & Englewood Railroad Co.
Missouri Pacific Railroad Co.
    Doniphan, Kensett & Searcy Railway Co.
    New Orleans & Lower Coast Railroad Co.
    Brownville & Matamoras Bridge Terminal Co.
    St. Joseph Belt Railway
Missouri-Illinois Railroad Co.
Norfolk & Western Railway Co.
    Chesapeake Western Railway Co.
    Lorain & West Virgina Railroad Co.
    New Jersey, Indiana & Illinois Railroad Co.
    Norfolk, Franklin & Danville Railway Co.
    Lake Erie & Ft. Wayne Railroad Co.
Pittsburgh & Lake Erie Railroad Co.
Peoria & Pekin Union Railway Co.
Pittsburg & Shawmut Railroad Co.
Prescott & Northwestern Railroad Co.
Raritan River Railroad Co.
Richmond, Fredericksburg & Potomac Railroad Co.
St. Louis-San Francisco Railway Co.
    Quanah, Acme & Pacific Railway Co.
St. Louis Southwestern Railway
Seaboard Coast Line Railroad Co.
    Columbia, Newberry & Laurens Railroad Co.
    Gainesville Midland Railroad Co.
Soo Line Railroad Co.
    Sault Ste. Bridge Co.
Southern Pacific Transportation Co.
    Holton Interurban Railway Co.
    Northwestern Pacific Railroad Co.
    Petaluma & Santa Rosa Railroad Co.
    San Diego & Arizona Eastern Railway Co.
    Visalia Electric Railroad Co.

Southern Railway Co.
- Alabama Great Southern Railroad Co.
- Louisiana & Southern Railway Co.
- New Orleans Terminal Co.
- Atlantic & Eastern Carolina Railway Co.
- Camp Le Jeune Railroad Co.
- Central of Georgia Railroad Co.
- Cin., New Orleans & Texas Pacific Railway Co.
- Georgia Northern Railway Co. (The)
- Georgia Southern & Florida Railway Co.
- Live Oak Perry & South Georgia Railroad
- State University Railroad Co.
- Interstate Railroad Co.
- St. Johns River Terminal Co.
- Tennessee, Alabama & Georgia Railway Co.
- Tennessee Railway Co.
- Norfolk Southern Railway

Texas & Pacific Railway Co.
- Abilene & Southern Railway Co.
- Texas-New Mexico Railway Co.
- Weatherfold, Mineral Wells & Northwestern Railway

Texas Mexican Railway Co.
Union Railroad (Pittsburgh)
Union Pacific Railroad
- Spokane International Railroad Co.
- Mt. Hood Railway Co.

Vermont Railway, Inc.
Western Maryland Railway Co.
Western Pacific Railroad Co.
- Sacramento Northern Railway
- Tidewater Southern Railway

Western Railway of Alabama
- Atlanta & West Point Railroad Co.

Winston-Salem Southbound Railway

Associate Members

Alaska Railroad
Aliquippa & Southern Railroad Co.
American Refrigerator Transit Co.
Apalachicola Northern Railroad Co.
Belfast & Moosehead Lake Railroad Co.
Birmingham Southern Railroad Co.
Brooklyn Eastern District Terminal Railroad
California Western Railroad
Chestnut Ridge Railway Co.
Chicago Short Line Railway Co.
Chicago South Shore & South Bend Railroad
Chicago, West Pullman & Southern Railroad Co.
Cities Service Co. Railroad
Colorado & Wyoming Railway Co.
Cuyahoga Valley Railway Co.
Dardanelle & Russeville Railroad
Delray Connecting Railroad Co.
Duluth & Northeastern Railroad Co.
Durham & Southern Railway Co.
East Erie Commercial Railroad
East Jersey Railroad & Terminal Co.
Fruit Growers Express Co.
Genesee & Wyoming Railroad Co.
Grafton & Upton Railroad Co.
Graysonia, Nashville & Ashdown Railroad Co.
Great Western Railway Co.
Hartfold & Slocomb Railroad—SSI Rail Corp.
Hillsdale County Railroad Co. Inc.
Johnstown & Stoney Creek Railroad Co.
La Salle & Bureau County Railroad Co.
Lake Terminal Railroad Co.
Louisiana & North West Railroad Co.
McKeesport Connecting Railroad Co.
Manufacturers' Junction Railway Co.
Minnesota, Dakota & Western Railway Co.
Monogahela Connecting Railroad Co.

New Orleans Public Belt Railroad
New Orleans Union Passsenger Terminal
New York City Transit Authority
Newburgh & South Shore Railway Co.
Northhampton & Bath Railroad Co.
Pacific Fruit Express Co.
Pearl River Valley Railroad Co.
Port Authority of New York & New Jersey (The)
River Terminal Railway Co.
Roscoe, Snyder & Pacific Railway Co.
Sierra Railroad Co. (California)
Southern Indiana Railway, Inc.
Texas & Nothern Railway Co.
Upper Merion & Plymouth Railroad Co.
United States Railway Association
Washington Terminal Co.
Youngstown & Northern Railroad Co.

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---

BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE*

The Association of American Railroads as *amicus curiae* submits this brief in support of Raymond Kassel, *et al.*, Appellants. The Association of American Railroads urges this Court to reverse the decision of the United States Court of Ajppeals for the Eighth Circuit in *Consolidated Freightways Corporation of Delaware* v. *Kassel,* 612 F.2d 1064 (8 Cir. 1979).

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 612 F.2d 1064 (8 Cir. 1979).

The opinion of the United States District Court for the Southern District of Iowa, is reported at 475 F.Supp. 544 (S.D. Iowa 1979).

STATEMENT OF THE CASE AND INTEREST OF THE *AMICUS CURIAE*

The State of Iowa has established and has enforced motor vehicle laws limiting the permisible length of trucks operating on the public highways in Iowa. These laws restrict most combinations of a truck-tractor and single trailer (semi-trailers) to 55 feet in total length. However, combinations of a truck-tractor and two trailers (double-bottoms) as well as semi-trailers designed to haul livestock, mobile homes, or highway and farm vehicles and implements may extend to a maximum of 60 feet in total length. Section 321.457, Code of Iowa (1979). Equipment carried on vehicle and implement carriers may extend three feet beyond the front or rear bumpers as long as the overall length of the load does not exceed 65 feet. Section 321.457(5), Code of Iowa (1979). As they pertain to double-bottoms, these length limits are in certain respects more restrictive than the limits adopted by a number of other states.

Consolidated Freightways Corporation of Delaware, the plaintiff in this litigation, has challenged the constitutionality of Iowa's truck length laws insofar as these laws limit double-bottom trucks to 60 feet. Consolidated Freightways would prefer to operate double-bottom trucks extending to 65 feet in length (so-called 65-foot twins), and thus, by way of this litigation seeks to enjoin the enforcement of Iowa's 60 foot length limitation against double-bottom trucks operating on the interstate highway in Iowa as well as on all other Iowa roads providing reasonable access between the interstate highways and facilities for food, fuel, repairs or rest. The ef-

fect of any injunction issued as a result of this litigation could, of course, reach far beyond the operations of Consolidated Freightways and would extend to all commodities and all trucking operations. Consolidated Freightways is among the Nation's largest common carriers of general commodities. Consolidated Freightways holds certificates of public convenience and necessity from the Interstate Commerce Commission and holds itself out to the public to be fit, willing, and able to perform those transportation services required by the public. Indeed, its operation extends to 46 states. Consolidated Freightways characterizes its operation as one in which the 65-foot twin has become the most common truck configuration, although other configurations, including the 60-foot twin and the 55-foot semi-trailer, are used. Trucking operations on Interstate 80, a major east-west route passing through Iowa, and on Interstate 35, a major north-south route passing through Iowa, are frustrated according to Consolidated Freightways because of the 60-foot length limit for double-bottoms operating in Iowa. Shipments must be either diverted around Iowa if moving in 65-foot twins, slowed while the 65-foot twins are broken down and individually moved across the state, or relegated to 55-foot semi-trailers and 60-foot double-bottoms. None of these alternatives is acceptable for the operations of Consolidated Freightways in the opinion of this company's management, and therefore, the motor carrier contends that the Iowa laws are an unjustified barrier to the free flow of commerce among the States.

Consolidated Freightways commenced this action in the district court below seeking a declaratory judgment and injunctive relief to restrain Iowa highway officials from enforcing the State's truck length limitations. The relief sought, and granted below, was directed to 65-foot double-bottoms operating on Iowa's interstate highways as well as other public roads in Iowa providing access to facilities for food, fuel, repairs, or rest. This relief of course would extend to any combination of 65-foot double-bottoms. Consolidated

Freightways to date has successfully argued that Iowa's 60-foot limit on double-bottoms constitutes an unjustified burden on interstate commerce. Consolidated Freightways has also argued that in providing certain exceptions to the general length limitations, Iowa's laws unconstitutionally discriminate against interstate commerce in favor of local interests.

The Motor Club of Iowa, an affiliate of the American Automobile Association, intervened in support of defendant highway officials below but did not appeal from the unfavorable order of the district court.

The district court, relying heavily upon this Court's recent decision in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978) and a perceived need to treat interstate highways apart from other public highways (J.S. App. 28a), granted the relief sought by Consolidated Freightways. The district court found that the record before it clearly suggested that 65-foot double-bottoms are as safe as, if not safer than, 60-foot double-bottoms, or 55-foot semi-trailers. (J.S. App. 21a.) The district court also found that the adjustments made by Consolidated Freightways in accomodating Iowa's truck length laws cause more miles to be traveled by 65-foot double-bottoms, thereby increasing the risk of accidents, highway wear, and fuel consumption. Upon these findings, the district court proceeded to what it variously termed a "balancing," a "sensitive consideration," and a "delicate adjustment" of the conflicting local and national interests. It held that the total effect of the safety measures did not outweigh the burdens on interstate commerce and declared, therefore, that Iowa's restriction on truck lengths amount to an unconstitutional burden on interstate commerce. The district court also analyzed the exceptions to the 55-foot and the 60-foot restrictions in view of Consolidated Freightway's contention that these exceptions discriminated against interstate commerce, but the court concluded that no undue discrimination existed.

The Court of Appeals for the Eighth Circuit affirmed the decision of the district court again relying upon this Court's decision in *Raymond*. According to the Eighth Circuit, the case at hand cannot be meaningfully distinguished from the *Raymond* case, and therefore, this Court's prior holding in *Raymond* is controlling. In so holding, the Eighth Circuit rejected Iowa's argument that a reviewing court properly cannot substitute its judgment for that of the State legislature on substantive questions of public safety. That court also rejected Iowa's argument that the State's effort to divert longer trucks from its public highways was a legitimate safety objective. The court characterizes such an effort an an "indirect" safety measure (J.S. App. 10a) and ruled that such measures must "automatically" give way to the national interests implicit in unrestricted interstate commerce. (*Id.*) In addition to rejecting these arguments put forward by Iowa, the court of appeals noted the existing exceptions to the 55-foot and 60-foot limitations and declared that such exceptions weaken the safety rationale put forward by the State.

The questions raised by Raymond Kassel, *et al.*, on this appeal are a matter of compelling interest to the Nation's railroads and to the Association of American Railroads. As set forth in its motion for leave to file, the Association of American Railroads is an unincorporated trade association whose membership includes almost all of the Class I railroads.[1] Its members operate 92 percent of the trackage, employ 94 percent of the workers, and generate 97 percent of the freight revenues of all railroads in the United States. The Association represents its members in a variety of matters that are of concern to many or all of them, including matters that affect the ability of railroads to compete with trucks. Six Class I railroads operate some 6,900 miles of track in Iowa.

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[1] As categorized by the Interstate Commerce Commission, Class I railroads are those roads having net annual revenues greater than $50 million. Of the 40 Class I railroads, only the Florida East Coast Railway and the Long Island Rail Road are not members of the Association.

Many other railroads participate in rail shipments that originate in, pass through, or terminate in Iowa. If not reversed, the decision of the courts below, by voiding the traditional role of State governments in establishing permissible truck size and weight limits, would promote the interests of the trucking industries in securing longer, heavier vehicles. Indeed, the district court below reluctantly noted that 108-foot triple-bottoms may be among the next innovations for the trucking industry. (J.S. App. 27a.) Longer, heavier trucks will affect directly the ability of railroads to maintain present traffic level as well as the ability to recapture traffic which through the years has moved from the rails to the highways.

The prospect of increased highway competition for intercity freight is a matter of particular concern to Association and its member railroads. Unlike our competitors who operate over highways constructed, owned, and maintained by the individual States, railroads generally have borne, and continue to bear, the tremendous costs of building and maintaining the roadbed, tracks, and signals essential for rail transportation. If the ability of State governments to limit truck sizes or weights is crippled, the unfair and shortsighted preferences enjoyed by motor carriers will be magnified. Railroads will find their ability to compete for intercity freight traffic eroded, while motor carriers will find themselves freed from the constraints of public safety regulation. The dismal financial posture of much of the railroad industry, as illustrated by the demise of the Rock Island and the bankruptcy of the Milwaukee Road (both beneficiaries of Iowa laws), is well known. The rate of return on net investment in 1979 was 2.68 percent for Class I railroads, an improvement over prior year's figure of 1.52 percent. The rate of return, however, has not been above 3 percent since 1966 nor above 4 percent since the mid-1950's. These returns must be contrasted with a rate of return of over 16 percent enjoyed by Class I motor common carriers in 1978, the latest figure

available.[2] If these motor cariers can succeed in finagling their way past legitimate public safety concerns until the longest length limit becomes the norm, the railroad industry undoubtedly will suffer.

Many of the employees of the Association and of its member railroads travel on interstate highways in the course of their employment, and no doubt all of them do as ordinary citizens in the motoring public. Their safety and their convenience in using public highways is a matter of direct concern to them. The district court below recognized the direct impact an increase in truck traffic will have on the ordinary citizen (J.S. App. 23a.) This impact includes an increase in highway congestion, the likelihood of more severe accidents given the trend toward smaller cars, an increase in pavement deterioration, an increase in consumption of fuel supplies, higher automobile insurance premimums, and the need for additional highway patrolmen. (J.S. App. 23a.)

For these reasons, the Association of American Railroads and its member railroads regard the appeal of Raymond Kassel, *et al.*, as vitally important and are compelled to provide the Court with these views as to why the decision of the court below should be reversed. The Association believes these views will be helpful to the Court in reaching its decision.

SUMMARY OF ARGUMENT

The power of a State to regulate the size and weight of motor vehicles operated in interstate commerce over the public highways in that State was first considered and upheld by the Court in *Morris* v. *Duby*, 274 U.S. 135 (1927). Although the court recognized in that decision that Congress could preempt State authority by establishing supervening Federal legislation, Congress has through the years and con-

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[2] 1979 Annual Report of the Interstate Commerce Commission, page 154.

tinues today to refrain from enacting such supervening legislation. In the Surface Transportation Assistance Ace of 1978, Congress has specifically recognized the need for further study and investigation of the impact Federally mandated limitations might have. It is clear that Congress perceives no need for increased limits or for uniform provisions among the States, for recent legislation has rejected such increases and uniformity, notwithstanding the intensive pressures from the motor carrier industry.

The specific State restriction under scrutiny, a 60-foot overall length limitation for double-bottom tractor-trailer combinations, does not conflict with any Federal law. Neither does the process by which Iowa has established and enforced this restriction (as well as its other vehicle length restrictions) conflict with any prior decisions of this Court. The 60-foot restriction is a part of the comprehensive highway regulation scheme adopted by Iowa to promote public safety. The court below has erred in ruling to contrary. That court has held Iowa's highway laws to a standard of review which significantly departs from the prior decisions of this Court and which permits a reviewing court to substitute its judgment for that of the highway experts in the weighty substance of highway safety matters. In so doing, the court below has substantially intruded upon the long recognized role of State legislators and highway officials. The decision of the court below will require a State to document to the satisfaction of a reviewing court the specific safety concerns associated with any particular vehicle configuration or any vehicle length. Such a result would obliterate the strong presumption of constitutionality with which the courts have traditionally viewed public safety laws and would require that constitutional questions be resolved with scientific precision.

The court below has also erred in holding the impact of restrictive highway laws, that is, the inevitable diversion of longer, heavier trucks around the Iowa public highways, is entitiled to no weight in the safety equation. In so doing, the court below has departed even from the very test it states it is

adopting. All evidence of public safety benefits to Iowa citizens should be weighed in determining the safety justification.

The Court's decision in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978) is not controlling in the present litigation because the issues now presented differ factually from those in *Raymond* and have reached the court on a substantially different record. This Court has previously recognized that substantive questions of highway safety are to be given a deference above most other public safety matters, for highway safety is peculiarly a local concern. The record in this case clearly demonstrates that the highway safety concerns shared by Iowa's highway officials are supported by substantive evidence and justification. These concerns are not illusory and, therefore, should not be evaluated under the tests employed by this Court where local concerns are illusory or do not rise to the special level of highway safety laws.

The burdens asserted by appellee in this litigation are not onerous, as appellee's own profitability clearly demonstrates. Rather, the burdens are largely attributable to appellee's business decision to purchase longer, heavier trucks. The alternatives available to motor carriers, *i.e.* smaller equipment, as well as the alternatives available to the Nation's freight shippers, *i.e.* railroads and other motor carriers operating 55-foot or 60-foot equipment in Iowa, clearly indicate that the burdens are not unreasonable.

For these reasons, the decision below should be reversed.

ARGUMENT

Iowa's 60-foot restriction on the length of double-bottom trucks is a rightful exercise of State powers to regulate highway traffic in the interest of public safety. The restriction does not conflict with any Federal law and does make a substantial contribution to public safety. The objections voiced by appellee in this litigation do not substantiate the contention that Iowa's truck length restrictions are an unreasonable burden on interstate commerce.

I. Iowa's restrictions on truck lengths are a rightful exercise of State powers to regulate highway traffic in the interest of public safety.

1. *The 60-foot limitation for double-bottom trucks does not conflict with any Federal law.*

In *Morris* v. *Duby*, 274 U.S. 135 (1927), this Court recognized that in the absence of preemptive measures by Congress a State retains its inherent powers to regulate vehicle sizes and weights, notwithstanding the Federal government's involvement in highway funding. In that 1927 decision this Court upheld an Oregon highway regulation which reduced the permissible weight limit for trucks operating in interstate commerce. The Court rejected the motor carrier arguments that restrictive measures taken by a State were constitutionally objectionable and declined to grant the injunctive relief sought by those motor carriers. Chief Justice Taft stated for the Court (*id.*, at 143) that:

> An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.

Although the subjects of Federal highways and interstate motor carrier operations have been before the Congress upon a number of occasions since the basic rule was laid down by this Court in 1927, Congress has chosen on each occasion to leave the question of truck lengths to the states. The most recent decision of Congress to leave this matter to the States is reflected in the Motor Carrier Act of 1980.[3]

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[3] This legislation was signed by the President on July 1, 1980.

Although this Court has recognized in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978), (hereinafter *Raymond*), Congress' unwillingness to preempt vehicle length regulations (*id.*, at 422), the *Raymond* decision as well as the courts below in this litigation have not acknowledged Congress' concern over the public safety implications in removing State powers to regulate long and heavy trucks. Public safety has been, and remains, a principal concern of Congress. In the earliest Federal highway aid statutes, such as those underlying the motor carrier objections at issue in *Morris* v. *Duby, supra,*[4] Congress did not withhold from the States the power to limit the size or the weight of motor vehicles operating on public highways. Neither did Congress choose to deprive the States of the power to limit vehicle sizes or weights when it fashioned a comprehensive plan to regulate interstate motor carriers in the Motor Carrier Act of 1935.[5] This Court so held in *Maurer* v. *Hamilton*, 309 U.S. 598, 613 (1940). And again, in enacting the legislation which gave rise to the development of the interstate highway system as it generally exists today, the Federal-Aid Highway Act of 1956,[6] Congress purposefully left the matter of vehicle sizes and weights to the States.

When it enacted the 1956 Act, Congress expressed its concern "over the increase in weights and dimensions of vehicles operated over the highways of the United States," while "recogniz[ing] that the regulation of weights and dimensions should be handled by the States." S. Rept. No.

[4] These statutes were "An Act to Provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," C.241, 39 Stat. 355; Section 5 of "An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes," C.69, 40 Stat. 1189; and the Federal Highway Act of November 9, 1921, 42 Stat. 212.

[5] 49 Stat. 543. The Motor Carrier Act, as amended, is codified at 49 U.S.C. 10101 *et seq.*

[6] 70 Stat. 374. The Federal-Aid Highway Act, as amended, is codified at 23 U.S.C. 101 *et seq.*

350, 84th Cong., 1st Sess. (1955), at 14. Thus, the bill reported by the Senate Committee on Public Works "prohibit[ed] apportionment of funds authorized for the National System of Interstate Highways to any State in which such system may be used by vehicles with any dimension or weight in excess of the greater of (1) the maximum corresponding dimensions or weight permitted by" the existing State law or (2) "recommended" by a 1946 document issued by the American Association of State Highway Officials. *Id.*, at 23; see also, *id.*, at 14-15.

While the bill reported by the Senate Committee was passed by the Senate,[7] generally similar legislation was defeated in the House. See 101 Cong. Rec. 11717-11718 (1955). In the next session of Congress, the Senate Committee reported a similar bill, including the provision putting a ceiling upon the size and weight maximums which could be allowed by the States in order to be eligible for Federal funding. See S. Rept. No. 1965, 84th Cong., 2d Sess. (1956), at 13-14. The Committee noted, among other things, that the provision was "designed to restrain further increases in weights and dimensions of vehicles using the Interstate System." *Id.*, at 16. By then, the House and passed a generally similar bill which, however, provided for a ceiling upon the maximum per-axle weight only.[8]

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[7] See 101 Cong. Rec. 7033 (1955). In the Senate debates, Senator Gore (the sponsor of the bill) stated, among other things, that the "committee did not feel that the Federal Government should seek to invade the jurisdiction of States in the exercise of their police power by entering the field of regulating or enforcing provisions relative to the size and weight of vehicles," but "has for some time been disturbed by continued increases in the weights and dimensions of vehicles operated over highways constructed in part with Federal funds," and concluded that "some action to encourage the States to do a better job in this field is appropriate." *Id.*, at 6717.

[8] See 102 Cong. Rec. 7221-7222 (1956). See, also, H. Rept. No. 2022, 84th Cong., 2d Sess. (1956), at 10, which "recognizes that maximum weight limitations for vehicles using the highways are fundamentally a problem of State regulation," but noted some restriction on the maximum weight that a State could allow to be desirable.

On the floor of the Senate, Senator Kerr submitted an amendment in the form of a substitute for the provision in question, which he noted had been modified from its original form in a "series of discussions with" Senator Gore (the sponsor of and floor leader for the legislation) to add "certain limiting factors" so that "with these modifications he is willing to accept the amendment." 102 Cong. Rec. 9220,9221 (1956). The modified Kerr amendment went further than the House Bill in placing ceilings upon maximum allowable overall weight and width, as well as upon maximum allowable weight per axle, but eliminated the ceilings upon maximum length and height contained in the provision reported by the Senate Committee.

In regard to elimination of the ceiling upon maximum allowable length, Senator Kerr explained "that in some of the Western States licenses are issued for the addition of another trailer to a truck, where there are long stretches of open road and little congestion of traffic." *Id.*, at 9221. His amendment would not "interfere with that," but on the other hand: "It is thought in my mind and in the minds of those who agree that the limitations in this amendment will be adequate, because in those States where circumstances do not permit the longer vehicle, the State regulatory bodies have already established limits on the lengths of vehicles. This amendment does not interfere with that." *Id.*, at 9222. He did not believe that, "if longer trucks are permitted in certain States, there will be a movement in adjoining States to have longer trucks operate in those States," so that "we shall have longer trucks on highways," because "that situation exists now" in that "neighboring States have different regulations, but they live side by side in peace, without conflict." *Id.*, at 9223.

Senator Gore stated that: "I thought I should yield on the height. A saw no necessitv of yielding on the length. However, in order to reach a compromise with the Senator from Oklahoma [Mr. Kerr], realizing that axle placement and

limitation would indirectly limit the length, and also believing that there was a total lack of uniformity as among the States, I agreed to that." *Id.*, at 9227. He further explained that: "What [the Kerr amendment] does not involve is the overall length, except indirectly. But when there is a limitation on both the per-axle weight and overall weight, practically speaking, there is a limitation on the vehicle, unless there is an additional unit drawn behind. I hope that my State will never permit it. I hope no other State which does not now permit it will in the future permit additional units to be drawn behind a tractor." *Id.* at 9224.

Both Senator Kerr and Senator Gore made clear that even with respect to maximum weight and width as to which ceilings would be established, the "amendment does not violate the integrity of a State which has limitations more exacting than those provided in the bill" (Senator Kerr), so that if "the State limitations were less, the provision would have no effect within that State" and the "State law would remain in effect" (Senator Gore). *Id.*, 9223, 9224. The Kerr admendment was adopted by the Senate (*id.*, at 9227), and was included unchanged in the bill reported by the Conference Committee[9] and enacted by the Congress. Hence, Section 108(j) of the Federal-Aid Highway Act of 1956 withheld Federal aid for the construction of Interstate highways from States in which the maximum allowable weight or width is "in excess of" amounts specificed in that statute or "by appropriate State authority in effect on July 1, 1956, whichever is the greater." 70 Stat. 381.

In 1974, the Congress amended that provision (88 Stat. 2283), as codified in 23 U.S.C. § 127, to permit "moderate

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[9] H. Rept. No. 2436, 84th Cong., 2d Sess. (1956), at 31-32.

[10] In the floor debates, Senator Bentsen explained that the increase in the allowable maximum weight was so limited in order "to make negligible the chances that trucks would have to be longer," and emphasized that: "In addition, the committee has left untouched the States' absolute power to regulate truck lengths. Truck lengths have never been written into Federal law, and the committee has no intention of changing that policy." 120 Cong. Rec. 30828 (1974).

increases" in the allowable weight maximums. S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.[10] In recommending that legislation, the Senate Committee on Public Works stated that it "strongly believes that the ultimate decision on the weights of trucks is a matter for the States, and it wishes to stress that this legislation is now designed as a recommendation for State action." *Ibid.* "The Committee, in fact, rejected an Administration recommendation that the increases be mandatory on the States, for it is the States which have to determine for themselves—based on the needs of their own economies—the capacities of their road system to accomodate such changes and the costs that may result from the increases." *Ibid.* "Moreover, the Committee considered and rejected recommendations by the Administration and others to write into law for the first time a Federal guideline on the lengths of trucks. *The Committee believes that truck lengths should remain, as they have been, a matter for State decision.*" *Ibid.* (Emphasis added.) A factor in those determinations was "the question of safety," as "[h]eavier and larger trucks are said to overstress bridges, cause buffeting of smaller vehicles, and impose a psychological impact on other drivers." *Ibid.*

In 1978 Congress again took up the subject of truck sizes and weights and the subject of uniform maximum provisions among the States. The resulting legislation, the Surface Transportation Assistance Act of 1978, 92 Stat. 2689, preserves in the States the power to set restrictions on trucks lengths. Section 161 of the legislation directs the Secretary of Transportation to study "the need for, and desirability of, uniformity in maximum truck size and weight limits throughout the United States."[11] This 1978 legislation clearly indicates that, in exercising its authority to provide for the

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[11] 92 Stat. 2689, 2719. This study is only one of the numerous studies and investigations directed by the 1978 legislation in order to present Congress with a clearer understanding of vehicle sizes and weights and their impact on highways and highway users. See also Sections 211, 506, and 507. *Id.*, at 2734, 2760, 2761.

free flow of traffic among the States and in developing the interstate highway system, Congress has not been persuaded of any need for absolute uniformity among State limitations on truck sizes or weights. Additionally, Congress recognized that any change in Federal policy should come only after the respective State highway officials have had an opportunity to make their case known to the Secretary of Transportation. Section 161 mandates that the study of truck size and weight limitations be "in cooperation with . . . the State departments of transportation or highway departments." In the absence of Congressional action pursuant to this study (the study results are not due until 1981), no basis exists for depriving a State of its traditional power to regulate vehicle sizes or weights.

Most recently, Congress again declined to preempt State law in The Motor Carrier Reform Act of 1980. Congress has left to the States the matter of regulating truck sizes and weights, although the questions of uniformity and of a 65-foot standard were squarely before it. In passing the Motor Carrier Reform Act of 1980, Congress declared that "safe, sound, competitive, and fuel efficient is vital to the maintenenance of a strong National economy and a strong National defense" and "that the statutes governing Federal regulation of the Motor carrier industry are outdated and must be revised to reflect the transportation needs and realities of the 1980's." With these findings in mind, the House passed S. 2245 (after substituting the language of H.R. 6418 for the Senate version[12]) on June 19, 1980, after amending the bill to delete a provision which would preempt truck length limits.[13] See 126 Cong. Rec. 5339, 5414 (1980). The

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[12] The findings of the House Committee on Interstate and Foreign Commerce on H.R. 6418 are reported in House Report No. 96-1069, 96th Cong. 2nd Sess. (1980).

[13] Section 203 would have conditioned Federal funding upon a complicated scheme of Federal length limitations. A number of similar premptive measures have been introduced but have not gained support in the 96th Congress. For example, see H.R. 4505, H.R. 4245, H.R. 4545, and H.R. 4563.

Senate passed the House version of S. 2245 on June 20, 1980, concurring to House initiative to delete a preemptive truck length measure. See 126 Cong. Rec. 7684 (1980). The legislation, without provision for any higher uniform length limit, was signed into law on July 1, 1980.

While Congress clearly has the power to enact legislation establishing national standards regarding the weight and sizes of motor vehicles operating in interstate commerce, and thus to preempt inconsistent State regulations on that subject, it has been content to leave that matter to the States in accordance with the constitutional standards which this Court enunciated in *Morris* v. *Duby, supra,* and in the subsequent decisions of this Court. Congress has been concerned about the persistent pressures to increase permissible truck lengths or weights and has opted, at a minimum, to achieve a better understanding of the impact longer or heavier trucks might have.

2. *Iowa's restrictions upon truck length are consistent with the prior decisions of this Court.*

This Court has long held that, in the absence of discrimination against intrastate commerce, a State may restrict motor vehicle sizes and weights as a public safety measure. *Morris* v. *Duby, supra.* The rationale for this deference to State authority lies in the States "ordinary" police powers, powers which Congress has not seen fit to preempt. (*Id.*, at 143.) Beyond *Morris* v. *Duby*, this Court has upon a number of occasions reiterated the sanctity of the States' police powers to promote public safety and welfare. In *Sproles* v. *Binford*, 286 U.S. 374 (1932), this Court upheld a comprehensive scheme of State highway measures prescribing limits to the width, height, length, and weight of trucks and the lading which might move by truck in Texas. This statutory scheme also permitted a limited number of exceptions where shipments might be non-divisible or of limited duration. There, in response to challenges to the constitutionality of the States restrictions, the Court ruled that it was

the legitimate role of the State of prevent wear and hazards due to excessive size of vehicles and weight of loads. And, this Court expressly noted that "scientific precision" was not to be expected in matters left to the "broad range of legislation discretion" and, indeed, that "scientific precision . . . . would subject the State to an intolerable supervision hostile to the basic principles of our government." *Id.*, at 388.

In *S.C. Hwy. Dept.* v. *Barnwell Bros.*, 303 U.S. 177 (1938), the Court again had occasion to review a challenge to truck size and weight restrictions adopted by a State. South Carolina established a far-reaching weight and width restriction which, in the aggrieved party's estimation, would have had the effect of prohibiting 85 to 90 percent of interstate trucks from using South Carolina's public highways. This Court upheld the constitutionality of this burdensome restriction, observing that "few subjects of state regulation are so peculiarly of local concern as is the use of state highways." (*Id.*, at 187.) The Court also noted that, notwithstanding the desirability and attractiveness of uniformity, of promoting national interests, and of curtailing State powers, it is not within judiciary's powers to look to standards which Congress might but has not adopted.

II. Iowa's restrictions on truck lengths make a substantial contribution to public safety.

L. *The incentives to move freight in and through Iowa in 55-foot semi-trailers or 60-foot double-bottoms promote highway safety.*

The courts below have noted that Iowa's truck length restrictions have resulted in a lighter traffic flow on public highways in Iowa than would otherwise occur if 65-foot double-bottoms would not have to operate around the State. Conversely, the traffic flow of 65-foot double-bottoms is alleged to be heavier in neighboring States. At least 75,000 additional truck trips would be made on Iowa highways if the 60-foot restriction were relaxed. (J.S. App. 92 and 23a.) The

Eighth Circuit has concluded, however, that this lighter traffic flow is not a cognizable safety claim and will automatically fail when contrasted with the competing national interest of free flowing interstate commerce. This holding conflicts with the previous decisions of this Court. It also must be contrasted with the Eighth Circuit's assertion that a reviewing court must look to the "total effect" of the challenged safety measure. In *Sproles* v. *Binford, supra,* this Court noted the State's concern over the increase in trucks used on Texas highways and upheld that State's efforts to promote the public welfare by limiting the number of larger, heavier trucks. The Court stated "this increase in 'truck density' justifies the dimensional and weight restrictions of the statute in the interest of public safety and convenience and highway protection." (*Id.,* at 385.) And again, in *S.C. Hwy. Dept.* v. *Barnwell Bros., supra.,* this Court highlighted the special local concern implicit in highway safety regulation and stated, "Few subject of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulations of which is so inseparable from a substantial effect on interstate commerce . . . . The state has a primary and immediate concern in their safe and economical administration." (*Id.*, at 187.) Relying upon this "primary and immediate concern" of South Carolina, this Court declined to interfere with State's efforts to regulate truck sizes and weights even though the State's efforts would necessarily divert heavier, wider trucks from South Carolina highways onto the highways of neighboring States. Although the Eighth Circuit has erred in applying the *Raymond* decision in this case, as will be discussed later, it is quite clear, however, even *Raymond* does not limit the public safety benefits to be taken into account to so-called "direct" safety measures. No appropriate basis exists for the lower court's distinction between direct versus indirect safety objectives (See J.S. App. 9a and 10a). This objection to that distinction is particularly proper where alternative transportation exists, especially where the alternative of railroad operations and trailer-on-flat-car (piggyback) operations exist. In *Sproles* v. *Binford, supra,* at 394,

the Court recognized the appropriate perspective, a perspective which the court below ignored. That perspective is as follows:

> The State has a vital interest in the appropriate utilization of the railroads which serve its people, as well as in the proper maintenance of its highways as safe and convenient facilities. The State provides its highways and pays for their upkeep. Its people make railroad transportation possible by the payment of transportation charges. It cannot be said that the State is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the State the right to foster a fair distribution of trafic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain.

The courts below have been persuaded by appellee's allegations of undue burden. The record, however, makes clear that Consolidated Freightway's enjoys substantial profits from its intercity freight operations, that 55-foot semi-trailers and 60-foot double-bottoms are available and are used by Consolidated Freightways, and that, in addition to the operations of Consolidated Freightways, a substantial number of equally profitable competitors exist among the Class I motor common carriers. In view of this record in this case, the Eighth Circuit has erred by automatically excluding from its inquiry the public benefits from a reduced traffic flow as additional factors pertinent to the public safety issue.

Another obvious shortcoming of the decision below is that it places no boundary upon the factual expertise highway officials will necesarily be required to generate in the future. All vehicle length limitation are suspect once placed in issue by a motor carrier initiating litigation. This result arises form the Eighth Circuit's reading of this Court's decision in *Raymond, supra.* The Eighth Circuit would require a State to go forward and to demonstrate by the weight of evidence

presented at trial that an asserted safety justification is substantive. (J.S. App. 7a) The application of the Eighth Circuit's requirement will mean that the vehicle length restrictions of each State are suspect because conclusive, documentary evidence may not be available or may not sufficiently refute the self-serving studies compiled by highway interests. Such a result was hardly intended by this Court in the *Raymond* decision. Rather, the Court noted with approval in that decision the well-established principle that a strong presumption of constitutionality attaches to State safety regulations. *(Id.*, at 443 and 444, citing *Bibb* v. *Navajo Freight Lines, 359 U.S. 520 (1959), Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970), and *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761 (1945). This presumption does not survive the decision below.

The court below has asserted that its holding "in no way endorses a lowest common denominator approach" to highway safety. (J.S. App. 10a.) Given its construction of *Raymond,* however, it is indeed difficult to predict any different result. Under the Eighth Circuit's reading, a truck configuration or length operated in interstate commerce on the interstate highways of one or more States acquires a presumption of safety in the absence of documentary evidence or some conclusive expression of expertise to the contrary. Quite clearly in the opinion of the Association, this is not what the Court mandated in voiding the Wisconsin laws in *Raymond.* The Court has held that scientific detail and documentation are not required where a State's police powers are involved. In *Sproles* v. *Binford, supra,* the Court appropriately declared, "to make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government . . . ." (*Id.*, at 388.) In *S.C. Hwy. Dept.* v. *Barnwell Bros., supra,* the Court observed with regard to the factual matters in dispute that "scientific precision is not the criterion for the exercise of the constitutional regulatory power of the st ates." (*Id.*, at 195, citing *Sproles* v. *Binford, supra.*) The decision of the Eighth Circuit is contrary to these prior holdings of the

McCloud River Railroad Co.
Maine Central Railroad Co.
    Portland Terminal Co.
Manufacturers Railway Co.
Minneapolis, Northfield & Southern Railway Co.
Missouri-Kansas-Texas Railroad Co.
    Beaver, Meade & Englewood Railroad Co.
Missouri Pacific Railroad Co.
    Doniphan, Kensett & Searcy Railway Co.
    New Orleans & Lower Coast Railroad Co.
    Brownville & Matamoras Bridge Terminal Co.
    St. Joseph Belt Railway
Missouri-Illinois Railroad Co.
Norfolk & Western Railway Co.
    Chesapeake Western Railway Co.
    Lorain & West Virgina Railroad Co.
    New Jersey, Indiana & Illinois Railroad Co.
    Norfolk, Franklin & Danville Railway Co.
    Lake Erie & Ft. Wayne Railroad Co.
Pittsburgh & Lake Erie Railroad Co.
Peoria & Pekin Union Railway Co.
Pittsburg & Shawmut Railroad Co.
Prescott & Northwestern Railroad Co.
Raritan River Railroad Co.
Richmond, Fredericksburg & Potomac Railroad Co.
St. Louis-San Francisco Railway Co.
    Quanah, Acme & Pacific Railway Co.
St. Louis Southwestern Railway
Seaboard Coast Line Railroad Co.
    Columbia, Newberry & Laurens Railroad Co.
    Gainesville Midland Railroad Co.
Soo Line Railroad Co.
    Sault Ste. Bridge Co.
Southern Pacific Transportation Co.
    Holton Interurban Railway Co.
    Northwestern Pacific Railroad Co.
    Petaluma & Santa Rosa Railroad Co.
    San Diego & Arizona Eastern Railway Co.
    Visalia Electric Railroad Co.

Southern Railway Co.
- Alabama Great Southern Railroad Co.
- Louisiana & Southern Railway Co.
- New Orleans Terminal Co.
- Atlantic & Eastern Carolina Railway Co.
- Camp Le Jeune Railroad Co.
- Central of Georgia Railroad Co.
- Cin., New Orleans & Texas Pacific Railway Co.
- Georgia Northern Railway Co. (The)
- Georgia Southern & Florida Railway Co.
- Live Oak Perry & South Georgia Railroad
- State University Railroad Co.
- Interstate Railroad Co.
- St. Johns River Terminal Co.
- Tennessee, Alabama & Georgia Railway Co.
- Tennessee Railway Co.
- Norfolk Southern Railway

Texas & Pacific Railway Co.
- Abilene & Southern Railway Co.
- Texas-New Mexico Railway Co.
- Weatherfold, Mineral Wells & Northwestern Railway

Texas Mexican Railway Co.
Union Railroad (Pittsburgh)
Union Pacific Railroad
- Spokane International Railroad Co.
- Mt. Hood Railway Co.

Vermont Railway, Inc.
Western Maryland Railway Co.
Western Pacific Railroad Co.
- Sacramento Northern Railway
- Tidewater Southern Railway

Western Railway of Alabama-
- Atlanta & West Point Railroad Co.

Winston-Salem Southbound Railway

Associate Members

Alaska Railroad
Aliquippa & Southern Railroad Co.
American Refrigerator Transit Co.
Apalachicola Northern Railroad Co.
Belfast & Moosehead Lake Railroad Co.
Birmingham Southern Railroad Co.
Brooklyn Eastern District Terminal Railroad
California Western Railroad
Chestnut Ridge Railway Co.
Chicago Short Line Railway Co.
Chicago South Shore & South Bend Railroad
Chicago, West Pullman & Southern Railroad Co.
Cities Service Co. Railroad
Colorado & Wyoming Railway Co.
Cuyahoga Valley Railway Co.
Dardanelle & Russeville Railroad
Delray Connecting Railroad Co.
Duluth & Northeastern Railroad Co.
Durham & Southern Railway Co.
East Erie Commercial Railroad
East Jersey Railroad & Terminal Co.
Fruit Growers Express Co.
Genesee & Wyoming Railroad Co.
Grafton & Upton Railroad Co.
Graysonia, Nashville & Ashdown Railroad Co.
Great Western Railway Co.
Hartfold & Slocomb Railroad—SSI Rail Corp.
Hillsdale County Railroad Co. Inc.
Johnstown & Stoney Creek Railroad Co.
La Salle & Bureau County Railroad Co.
Lake Terminal Railroad Co.
Louisiana & North West Railroad Co.
McKeesport Connecting Railroad Co.
Manufacturers' Junction Railway Co.
Minnesota, Dakota & Western Railway Co.
Monogahela Connecting Railroad Co.

New Orleans Public Belt Railroad
New Orleans Union Passsenger Terminal
New York City Transit Authority
Newburgh & South Shore Railway Co.
Northhampton & Bath Railroad Co.
Pacific Fruit Express Co.
Pearl River Valley Railroad Co.
Port Authority of New York & New Jersey (The)
River Terminal Railway Co.
Roscoe, Snyder & Pacific Railway Co.
Sierra Railroad Co. (California)
Southern Indiana Railway, Inc.
Texas & Nothern Railway Co.
Upper Merion & Plymouth Railroad Co.
United States Railway Association
Washington Terminal Co.
Youngstown & Northern Railroad Co.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1320

RAYMOND KASSEL, ET AL., *Appellants,*

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A Delaware Corporation, *Appellee.*

On Appeal from the United States Court of Appeals for the Eighth Circuit

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BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE*

The Association of American Railroads as *amicus curiae* submits this brief in support of Raymond Kassel, *et al.*, Appellants. The Association of American Railroads urges this Court to reverse the decision of the United States Court of Ajppeals for the Eighth Circuit in *Consolidated Freightways Corporation of Delaware* v. *Kassel,* 612 F.2d 1064 (8 Cir. 1979).

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 612 F.2d 1064 (8 Cir. 1979).

The opinion of the United States District Court for the Southern District of Iowa, is reported at 475 F.Supp. 544 (S.D. Iowa 1979).

STATEMENT OF THE CASE AND INTEREST OF THE *AMICUS CURIAE*

The State of Iowa has established and has enforced motor vehicle laws limiting the permisible length of trucks operating on the public highways in Iowa. These laws restrict most combinations of a truck-tractor and single trailer (semi-trailers) to 55 feet in total length. However, combinations of a truck-tractor and two trailers (double-bottoms) as well as semi-trailers designed to haul livestock, mobile homes, or highway and farm vehicles and implements may extend to a maximum of 60 feet in total length. Section 321.457, Code of Iowa (1979). Equipment carried on vehicle and implement carriers may extend three feet beyond the front or rear bumpers as long as the overall length of the load does not exceed 65 feet. Section 321.457(5), Code of Iowa (1979). As they pertain to double-bottoms, these length limits are in certain respects more restrictive than the limits adopted by a number of other states.

Consolidated Freightways Corporation of Delaware, the plaintiff in this litigation, has challenged the constitutionality of Iowa's truck length laws insofar as these laws limit double-bottom trucks to 60 feet. Consolidated Freightways would prefer to operate double-bottom trucks extending to 65 feet in length (so-called 65-foot twins), and thus, by way of this litigation seeks to enjoin the enforcement of Iowa's 60 foot length limitation against double-bottom trucks operating on the interstate highway in Iowa as well as on all other Iowa roads providing reasonable access between the interstate highways and facilities for food, fuel, repairs or rest. The ef-

fect of any injunction issued as a result of this litigation could, of course, reach far beyond the operations of Consolidated Freightways and would extend to all commodities and all trucking operations. Consolidated Freightways is among the Nation's largest common carriers of general commodities. Consolidated Freightways holds certificates of public convenience and necessity from the Interstate Commerce Commission and holds itself out to the public to be fit, willing, and able to perform those transportation services required by the public. Indeed, its operation extends to 46 states. Consolidated Freightways characterizes its operation as one in which the 65-foot twin has become the most common truck configuration, although other configurations, including the 60-foot twin and the 55-foot semi-trailer, are used. Trucking operations on Interstate 80, a major east-west route passing through Iowa, and on Interstate 35, a major north-south route passing through Iowa, are frustrated according to Consolidated Freightways because of the 60-foot length limit for double-bottoms operating in Iowa. Shipments must be either diverted around Iowa if moving in 65-foot twins, slowed while the 65-foot twins are broken down and individually moved across the state, or relegated to 55-foot semi-trailers and 60-foot double-bottoms. None of these alternatives is acceptable for the operations of Consolidated Freightways in the opinion of this company's management, and therefore, the motor carrier contends that the Iowa laws are an unjustified barrier to the free flow of commerce among the States.

Consolidated Freightways commenced this action in the district court below seeking a declaratory judgment and injunctive relief to restrain Iowa highway officials from enforcing the State's truck length limitations. The relief sought, and granted below, was directed to 65-foot double-bottoms operating on Iowa's interstate highways as well as other public roads in Iowa providing access to facilities for food, fuel, repairs, or rest. This relief of course would extend to any combination of 65-foot double-bottoms. Consolidated

Freightways to date has successfully argued that Iowa's 60-foot limit on double-bottoms constitutes an unjustified burden on interstate commerce. Consolidated Freightways has also argued that in providing certain exceptions to the general length limitations, Iowa's laws unconstitutionally discriminate against interstate commerce in favor of local interests.

The Motor Club of Iowa, an affiliate of the American Automobile Association, intervened in support of defendant highway officials below but did not appeal from the unfavorable order of the district court.

The district court, relying heavily upon this Court's recent decision in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978) and a perceived need to treat interstate highways apart from other public highways (J.S. App. 28a), granted the relief sought by Consolidated Freightways. The district court found that the record before it clearly suggested that 65-foot double-bottoms are as safe as, if not safer than, 60-foot double-bottoms, or 55-foot semi-trailers. (J.S. App. 21a.) The district court also found that the adjustments made by Consolidated Freightways in accomodating Iowa's truck length laws cause more miles to be traveled by 65-foot double-bottoms, thereby increasing the risk of accidents, highway wear, and fuel consumption. Upon these findings, the district court proceeded to what it variously termed a "balancing," a "sensitive consideration," and a "delicate adjustment" of the conflicting local and national interests. It held that the total effect of the safety measures did not outweigh the burdens on interstate commerce and declared, therefore, that Iowa's restriction on truck lengths amount to an unconstitutional burden on interstate commerce. The district court also analyzed the exceptions to the 55-foot and the 60-foot restrictions in view of Consolidated Freightway's contention that these exceptions discriminated against interstate commerce, but the court concluded that no undue discrimination existed.

The Court of Appeals for the Eighth Circuit affirmed the decision of the district court again relying upon this Court's decision in *Raymond*. According to the Eighth Circuit, the case at hand cannot be meaningfully distinguished from the *Raymond* case, and therefore, this Court's prior holding in *Raymond* is controlling. In so holding, the Eighth Circuit rejected Iowa's argument that a reviewing court properly cannot substitute its judgment for that of the State legislature on substantive questions of public safety. That court also rejected Iowa's argument that the State's effort to divert longer trucks from its public highways was a legitimate safety objective. The court characterizes such an effort an an "indirect" safety measure (J.S. App. 10a) and ruled that such measures must "automatically" give way to the national interests implicit in unrestricted interstate commerce. (*Id.*) In addition to rejecting these arguments put forward by Iowa, the court of appeals noted the existing exceptions to the 55-foot and 60-foot limitations and declared that such exceptions weaken the safety rationale put forward by the State.

The questions raised by Raymond Kassel, *et al.*, on this appeal are a matter of compelling interest to the Nation's railroads and to the Association of American Railroads. As set forth in its motion for leave to file, the Association of American Railroads is an unincorporated trade association whose membership includes almost all of the Class I railroads.[1] Its members operate 92 percent of the trackage, employ 94 percent of the workers, and generate 97 percent of the freight revenues of all railroads in the United States. The Association represents its members in a variety of matters that are of concern to many or all of them, including matters that affect the ability of railroads to compete with trucks. Six Class I railroads operate some 6,900 miles of track in Iowa.

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[1] As categorized by the Interstate Commerce Commission, Class I railroads are those roads having net annual revenues greater than $50 million. Of the 40 Class I railroads, only the Florida East Coast Railway and the Long Island Rail Road are not members of the Association.

Many other railroads participate in rail shipments that originate in, pass through, or terminate in Iowa. If not reversed, the decision of the courts below, by voiding the traditional role of State governments in establishing permissible truck size and weight limits, would promote the interests of the trucking industries in securing longer, heavier vehicles. Indeed, the district court below reluctantly noted that 108-foot triple-bottoms may be among the next innovations for the trucking industry. (J.S. App. 27a.) Longer, heavier trucks will affect directly the ability of railroads to maintain present traffic level as well as the ability to recapture traffic which through the years has moved from the rails to the highways.

The prospect of increased highway competition for intercity freight is a matter of particular concern to Association and its member railroads. Unlike our competitors who operate over highways constructed, owned, and maintained by the individual States, railroads generally have borne, and continue to bear, the tremendous costs of building and maintaining the roadbed, tracks, and signals essential for rail transportation. If the ability of State governments to limit truck sizes or weights is crippled, the unfair and shortsighted preferences enjoyed by motor carriers will be magnified. Railroads will find their ability to compete for intercity freight traffic eroded, while motor carriers will find themselves freed from the constraints of public safety regulation. The dismal financial posture of much of the railroad industry, as illustrated by the demise of the Rock Island and the bankruptcy of the Milwaukee Road (both beneficiaries of Iowa laws), is well known. The rate of return on net investment in 1979 was 2.68 percent for Class I railroads, an improvement over prior year's figure of 1.52 percent. The rate of return, however, has not been above 3 percent since 1966 nor above 4 percent since the mid-1950's. These returns must be contrasted with a rate of return of over 16 percent enjoyed by Class I motor common carriers in 1978, the latest figure

available.[2] If these motor cariers can succeed in finagling their way past legitimate public safety concerns until the longest length limit becomes the norm, the railroad industry undoubtedly will suffer.

Many of the employees of the Association and of its member railroads travel on interstate highways in the course of their employment, and no doubt all of them do as ordinary citizens in the motoring public. Their safety and their convenience in using public highways is a matter of direct concern to them. The district court below recognized the direct impact an increase in truck traffic will have on the ordinary citizen (J.S. App. 23a.) This impact includes an increase in highway congestion, the likelihood of more severe accidents given the trend toward smaller cars, an increase in pavement deterioration, an increase in consumption of fuel supplies, higher automobile insurance premimums, and the need for additional highway patrolmen. (J.S. App. 23a.)

For these reasons, the Association of American Railroads and its member railroads regard the appeal of Raymond Kassel, *et al.*, as vitally important and are compelled to provide the Court with these views as to why the decision of the court below should be reversed. The Association believes these views will be helpful to the Court in reaching its decision.

SUMMARY OF ARGUMENT

The power of a State to regulate the size and weight of motor vehicles operated in interstate commerce over the public highways in that State was first considered and upheld by the Court in *Morris* v. *Duby,* 274 U.S. 135 (1927). Although the court recognized in that decision that Congress could preempt State authority by establishing supervening Federal legislation, Congress has through the years and con-

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[2] 1979 Annual Report of the Interstate Commerce Commission, page 154.

tinues today to refrain from enacting such supervening legislation. In the Surface Transportation Assistance Ace of 1978, Congress has specifically recognized the need for further study and investigation of the impact Federally mandated limitations might have. It is clear that Congress perceives no need for increased limits or for uniform provisions among the States, for recent legislation has rejected such increases and uniformity, notwithstanding the intensive pressures from the motor carrier industry.

The specific State restriction under scrutiny, a 60-foot overall length limitation for double-bottom tractor-trailer combinations, does not conflict with any Federal law. Neither does the process by which Iowa has established and enforced this restriction (as well as its other vehicle length restrictions) conflict with any prior decisions of this Court. The 60-foot restriction is a part of the comprehensive highway regulation scheme adopted by Iowa to promote public safety. The court below has erred in ruling to contrary. That court has held Iowa's highway laws to a standard of review which significantly departs from the prior decisions of this Court and which permits a reviewing court to substitute its judgment for that of the highway experts in the weighty substance of highway safety matters. In so doing, the court below has substantially intruded upon the long recognized role of State legislators and highway officials. The decision of the court below will require a State to document to the satisfaction of a reviewing court the specific safety concerns associated with any particular vehicle configuration or any vehicle length. Such a result would obliterate the strong presumption of constitutionality with which the courts have traditionally viewed public safety laws and would require that constitutional questions be resolved with scientific precision.

The court below has also erred in holding the impact of restrictive highway laws, that is, the inevitable diversion of longer, heavier trucks around the Iowa public highways, is entitiled to no weight in the safety equation. In so doing, the court below has departed even from the very test it states it is

adopting. All evidence of public safety benefits to Iowa citizens should be weighed in determining the safety justification.

The Court's decision in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978) is not controlling in the present litigation because the issues now presented differ factually from those in *Raymond* and have reached the court on a substantially different record. This Court has previously recognized that substantive questions of highway safety are to be given a deference above most other public safety matters, for highway safety is peculiarly a local concern. The record in this case clearly demonstrates that the highway safety concerns shared by Iowa's highway officials are supported by substantive evidence and justification. These concerns are not illusory and, therefore, should not be evaluated under the tests employed by this Court where local concerns are illusory or do not rise to the special level of highway safety laws.

The burdens asserted by appellee in this litigation are not onerous, as appellee's own profitability clearly demonstrates. Rather, the burdens are largely attributable to appellee's business decision to purchase longer, heavier trucks. The alternatives available to motor carriers, *i.e.* smaller equipment, as well as the alternatives available to the Nation's freight shippers, *i.e.* railroads and other motor carriers operating 55-foot or 60-foot equipment in Iowa, clearly indicate that the burdens are not unreasonable.

For these reasons, the decision below should be reversed.

ARGUMENT

Iowa's 60-foot restriction on the length of double-bottom trucks is a rightful exercise of State powers to regulate highway traffic in the interest of public safety. The restriction does not conflict with any Federal law and does make a substantial contribution to public safety. The objections voiced by appellee in this litigation do not substantiate the contention that Iowa's truck length restrictions are an unreasonable burden on interstate commerce.

I. Iowa's restrictions on truck lengths are a rightful exercise of State powers to regulate highway traffic in the interest of public safety.

1. *The 60-foot limitation for double-bottom trucks does not conflict with any Federal law.*

In *Morris* v. *Duby*, 274 U.S. 135 (1927), this Court recognized that in the absence of preemptive measures by Congress a State retains its inherent powers to regulate vehicle sizes and weights, notwithstanding the Federal government's involvement in highway funding. In that 1927 decision this Court upheld an Oregon highway regulation which reduced the permissible weight limit for trucks operating in interstate commerce. The Court rejected the motor carrier arguments that restrictive measures taken by a State were constitutionally objectionable and declined to grant the injunctive relief sought by those motor carriers. Chief Justice Taft stated for the Court (*id.*, at 143) that:

> An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adopted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.

Although the subjects of Federal highways and interstate motor carrier operations have been before the Congress upon a number of occasions since the basic rule was laid down by this Court in 1927, Congress has chosen on each occasion to leave the question of truck lengths to the states. The most recent decision of Congress to leave this matter to the States is reflected in the Motor Carrier Act of 1980.[3]

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[3] This legislation was signed by the President on July 1, 1980.

Although this Court has recognized in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978), (hereinafter *Raymond*), Congress' unwillingness to preempt vehicle length regulations (*id.*, at 422), the *Raymond* decision as well as the courts below in this litigation have not acknowledged Congress' concern over the public safety implications in removing State powers to regulate long and heavy trucks. Public safety has been, and remains, a principal concern of Congress. In the earliest Federal highway aid statutes, such as those underlying the motor carrier objections at issue in *Morris* v. *Duby, supra,*[4] Congress did not withhold from the States the power to limit the size or the weight of motor vehicles operating on public highways. Neither did Congress choose to deprive the States of the power to limit vehicle sizes or weights when it fashioned a comprehensive plan to regulate interstate motor carriers in the Motor Carrier Act of 1935.[5] This Court so held in *Maurer* v. *Hamilton*, 309 U.S. 598, 613 (1940). And again, in enacting the legislation which gave rise to the development of the interstate highway system as it generally exists today, the Federal-Aid Highway Act of 1956,[6] Congress purposefully left the matter of vehicle sizes and weights to the States.

When it enacted the 1956 Act, Congress expressed its concern "over the increase in weights and dimensions of vehicles operated over the highways of the United States," while "recogniz[ing] that the regulation of weights and dimensions should be handled by the States." S. Rept. No.

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[4] These statutes were "An Act to Provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," C.241, 39 Stat. 355; Section 5 of "An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1920, and for other purposes," C.69, 40 Stat. 1189; and the Federal Highway Act of November 9, 1921, 42 Stat. 212.

[5] 49 Stat. 543. The Motor Carrier Act, as amended, is codified at 49 U.S.C. 10101 *et seq.*

[6] 70 Stat. 374. The Federal-Aid Highway Act, as amended, is codified at 23 U.S.C. 101 *et seq.*

350, 84th Cong., 1st Sess. (1955), at 14. Thus, the bill reported by the Senate Committee on Public Works "prohibit[ed] apportionment of funds authorized for the National System of Interstate Highways to any State in which such system may be used by vehicles with any dimension or weight in excess of the greater of (1) the maximum corresponding dimensions or weight permitted by" the existing State law or (2) "recommended" by a 1946 document issued by the American Association of State Highway Officials. *Id.*, at 23; see also, *id.*, at 14-15.

While the bill reported by the Senate Committee was passed by the Senate,[7] generally similar legislation was defeated in the House. See 101 Cong. Rec. 11717-11718 (1955). In the next session of Congress, the Senate Committee reported a similar bill, including the provision putting a ceiling upon the size and weight maximums which could be allowed by the States in order to be eligible for Federal funding. See S. Rept. No. 1965, 84th Cong., 2d Sess. (1956), at 13-14. The Committee noted, among other things, that the provision was "designed to restrain further increases in weights and dimensions of vehicles using the Interstate System." *Id.*, at 16. By then, the House and passed a generally similar bill which, however, provided for a ceiling upon the maximum per-axle weight only.[8]

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[7] See 101 Cong. Rec. 7033 (1955). In the Senate debates, Senator Gore (the sponsor of the bill) stated, among other things, that the "committee did not feel that the Federal Government should seek to invade the jurisdiction of States in the exercise of their police power by entering the field of regulating or enforcing provisions relative to the size and weight of vehicles," but "has for some time been disturbed by continued increases in the weights and dimensions of vehicles operated over highways constructed in part with Federal funds," and concluded that "some action to encourage the States to do a better job in this field is appropriate." *Id.*, at 6717.

[8] See 102 Cong. Rec. 7221-7222 (1956). See, also, H. Rept. No. 2022, 84th Cong., 2d Sess. (1956), at 10, which "recognizes that maximum weight limitations for vehicles using the highways are fundamentally a problem of State regulation," but noted some restriction on the maximum weight that a State could allow to be desirable.

On the floor of the Senate, Senator Kerr submitted an amendment in the form of a substitute for the provision in question, which he noted had been modified from its original form in a "series of discussions with" Senator Gore (the sponsor of and floor leader for the legislation) to add "certain limiting factors" so that "with these modifications he is willing to accept the amendment." 102 Cong. Rec. 9220,9221 (1956). The modified Kerr amendment went further than the House Bill in placing ceilings upon maximum allowable overall weight and width, as well as upon maximum allowable weight per axle, but eliminated the ceilings upon maximum length and height contained in the provision reported by the Senate Committee.

In regard to elimination of the ceiling upon maximum allowable length, Senator Kerr explained "that in some of the Western States licenses are issued for the addition of another trailer to a truck, where there are long stretches of open road and little congestion of traffic." *Id.*, at 9221. His amendment would not "interfere with that," but on the other hand: "It is thought in my mind and in the minds of those who agree that the limitations in this amendment will be adequate, because in those States where circumstances do not permit the longer vehicle, the State regulatory bodies have already established limits on the lengths of vehicles. This amendment does not interfere with that." *Id.*, at 9222. He did not believe that, "if longer trucks are permitted in certain States, there will be a movement in adjoining States to have longer trucks operate in those States," so that "we shall have longer trucks on highways," because "that situation exists now" in that "neighboring States have different regulations, but they live side by side in peace, without conflict." *Id.*, at 9223.

Senator Gore stated that: "I thought I should yield on the height. A saw no necessity of yielding on the length. However, in order to reach a compromise with the Senator from Oklahoma [Mr. Kerr], realizing that axle placement and

limitation would indirectly limit the length, and also believing that there was a total lack of uniformity as among the States, I agreed to that." *Id.*, at 9227. He further explained that: "What [the Kerr amendment] does not involve is the overall length, except indirectly. But when there is a limitation on both the per-axle weight and overall weight, practically speaking, there is a limitation on the vehicle, unless there is an additional unit drawn behind. I hope that my State will never permit it. I hope no other State which does not now permit it will in the future permit additional units to be drawn behind a tractor." *Id.* at 9224.

Both Senator Kerr and Senator Gore made clear that even with respect to maximum weight and width as to which ceilings would be established, the "amendment does not violate the integrity of a State which has limitations more exacting than those provided in the bill" (Senator Kerr), so that if "the State limitations were less, the provision would have no effect within that State" and the "State law would remain in effect" (Senator Gore). *Id.*, 9223, 9224. The Kerr admendment was adopted by the Senate (*id.*, at 9227), and was included unchanged in the bill reported by the Conference Committee[9] and enacted by the Congress. Hence, Section 108(j) of the Federal-Aid Highway Act of 1956 withheld Federal aid for the construction of Interstate highways from States in which the maximum allowable weight or width is "in excess of" amounts specificed in that statute or "by appropriate State authority in effect on July 1, 1956, whichever is the greater." 70 Stat. 381.

In 1974, the Congress amended that provision (88 Stat. 2283), as codified in 23 U.S.C. § 127, to permit "moderate

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[9] H. Rept. No. 2436, 84th Cong., 2d Sess. (1956), at 31-32.

[10] In the floor debates, Senator Bentsen explained that the increase in the allowable maximum weight was so limited in order "to make negligible the chances that trucks would have to be longer," and emphasized that: "In addition, the committee has left untouched the States' absolute power to regulate truck lengths. Truck lengths have never been written into Federal law, and the committee has no intention of changing that policy." 120 Cong. Rec. 30828 (1974).

increases" in the allowable weight maximums. S. Rept. No. 93-1111, 93d Cong., 2d Sess. (1974), at 10.[10] In recommending that legislation, the Senate Committee on Public Works stated that it "strongly believes that the ultimate decision on the weights of trucks is a matter for the States, and it wishes to stress that this legislation is now designed as a recommendation for State action." *Ibid.* "The Committee, in fact, rejected an Administration recommendation that the increases be mandatory on the States, for it is the States which have to determine for themselves—based on the needs of their own economies—the capacities of their road system to accomodate such changes and the costs that may result from the increases." *Ibid.* "Moreover, the Committee considered and rejected recommendations by the Administration and others to write into law for the first time a Federal guideline on the lengths of trucks. *The Committee believes that truck lengths should remain, as they have been, a matter for State decision.*" *Ibid.* (Emphasis added.) A factor in those determinations was "the question of safety," as "[h]eavier and larger trucks are said to overstress bridges, cause buffeting of smaller vehicles, and impose a psychological impact on other drivers." *Ibid.*

In 1978 Congress again took up the subject of truck sizes and weights and the subject of uniform maximum provisions among the States. The resulting legislation, the Surface Transportation Assistance Act of 1978, 92 Stat. 2689, preserves in the States the power to set restrictions on trucks lengths. Section 161 of the legislation directs the Secretary of Transportation to study "the need for, and desirability of, uniformity in maximum truck size and weight limits throughout the United States."[11] This 1978 legislation clearly indicates that, in exercising its authority to provide for the

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[11] 92 Stat. 2689, 2719. This study is only one of the numerous studies and investigations directed by the 1978 legislation in order to present Congress with a clearer understanding of vehicle sizes and weights and their impact on highways and highway users. See also Sections 211, 506, and 507. *Id.*, at 2734, 2760, 2761.

free flow of traffic among the States and in developing the interstate highway system, Congress has not been persuaded of any need for absolute uniformity among State limitations on truck sizes or weights. Additionally, Congress recognized that any change in Federal policy should come only after the respective State highway officials have had an opportunity to make their case known to the Secretary of Transportation. Section 161 mandates that the study of truck size and weight limitations be "in cooperation with . . . the State departments of transportation or highway departments." In the absence of Congressional action pursuant to this study (the study results are not due until 1981), no basis exists for depriving a State of its traditional power to regulate vehicle sizes or weights.

Most recently, Congress again declined to preempt State law in The Motor Carrier Reform Act of 1980. Congress has left to the States the matter of regulating truck sizes and weights, although the questions of uniformity and of a 65-foot standard were squarely before it. In passing the Motor Carrier Reform Act of 1980, Congress declared that "safe, sound, competitive, and fuel efficient is vital to the maintenenance of a strong National economy and a strong National defense" and "that the statutes governing Federal regulation of the Motor carrier industry are outdated and must be revised to reflect the transportation needs and realities of the 1980's." With these findings in mind, the House passed S. 2245 (after substituting the language of H.R. 6418 for the Senate version[12]) on June 19, 1980, after amending the bill to delete a provision which would preempt truck length limits.[13] See 126 Cong. Rec. 5339, 5414 (1980). The

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[12] The findings of the House Committee on Interstate and Foreign Commerce on H.R. 6418 are reported in House Report No. 96-1069, 96th Cong. 2nd Sess. (1980).

[13] Section 203 would have conditioned Federal funding upon a complicated scheme of Federal length limitations. A number of similar premptive measures have been introduced but have not gained support in the 96th Congress. For example, see H.R. 4505, H.R. 4245, H.R. 4545, and H.R. 4563.

Senate passed the House version of S. 2245 on June 20, 1980, concurring to House initiative to delete a preemptive truck length measure. See 126 Cong. Rec. 7684 (1980). The legislation, without provision for any higher uniform length limit, was signed into law on July 1, 1980.

While Congress clearly has the power to enact legislation establishing national standards regarding the weight and sizes of motor vehicles operating in interstate commerce, and thus to preempt inconsistent State regulations on that subject, it has been content to leave that matter to the States in accordance with the constitutional standards which this Court enunciated in *Morris* v. *Duby, supra,* and in the subsequent decisions of this Court. Congress has been concerned about the persistent pressures to increase permissible truck lengths or weights and has opted, at a minimum, to achieve a better understanding of the impact longer or heavier trucks might have.

2. *Iowa's restrictions upon truck length are consistent with the prior decisions of this Court.*

This Court has long held that, in the absence of discrimination against intrastate commerce, a State may restrict motor vehicle sizes and weights as a public safety measure. *Morris* v. *Duby, supra.* The rationale for this deference to State authority lies in the States "ordinary" police powers, powers which Congress has not seen fit to preempt. (*Id.*, at 143.) Beyond *Morris* v. *Duby*, this Court has upon a number of occasions reiterated the sanctity of the States' police powers to promote public safety and welfare. In *Sproles* v. *Binford*, 286 U.S. 374 (1932), this Court upheld a comprehensive scheme of State highway measures prescribing limits to the width, height, length, and weight of trucks and the lading which might move by truck in Texas. This statutory scheme also permitted a limited number of exceptions where shipments might be non-divisible or of limited duration. There, in response to challenges to the constitutionality of the States restrictions, the Court ruled that it was

the legitimate role of the State of prevent wear and hazards due to excessive size of vehicles and weight of loads. And, this Court expressly noted that "scientific precision" was not to be expected in matters left to the "broad range of legislation discretion" and, indeed, that "scientific precision . . . . would subject the State to an intolerable supervision hostile to the basic principles of our government." *Id.*, at 388.

In *S.C. Hwy. Dept.* v. *Barnwell Bros.*, 303 U.S. 177 (1938), the Court again had occasion to review a challenge to truck size and weight restrictions adopted by a State. South Carolina established a far-reaching weight and width restriction which, in the aggrieved party's estimation, would have had the effect of prohibiting 85 to 90 percent of interstate trucks from using South Carolina's public highways. This Court upheld the constitutionality of this burdensome restriction, observing that "few subjects of state regulation are so peculiarly of local concern as is the use of state highways." (*Id.*, at 187.) The Court also noted that, notwithstanding the desirability and attractiveness of uniformity, of promoting national interests, and of curtailing State powers, it is not within judiciary's powers to look to standards which Congress might but has not adopted.

II. Iowa's restrictions on truck lengths make a substantial contribution to public safety.

L. *The incentives to move freight in and through Iowa in 55-foot semi-trailers or 60-foot double-bottoms promote highway safety.*

The courts below have noted that Iowa's truck length restrictions have resulted in a lighter traffic flow on public highways in Iowa than would otherwise occur if 65-foot double-bottoms would not have to operate around the State. Conversely, the traffic flow of 65-foot double-bottoms is alleged to be heavier in neighboring States. At least 75,000 additional truck trips would be made on Iowa highways if the 60-foot restriction were relaxed. (J.S. App. 92 and 23a.) The

Eighth Circuit has concluded, however, that this lighter traffic flow is not a cognizable safety claim and will automatically fail when contrasted with the competing national interest of free flowing interstate commerce. This holding conflicts with the previous decisions of this Court. It also must be contrasted with the Eighth Circuit's assertion that a reviewing court must look to the "total effect" of the challenged safety measure. In *Sproles* v. *Binford, supra,* this Court noted the State's concern over the increase in trucks used on Texas highways and upheld that State's efforts to promote the public welfare by limiting the number of larger, heavier trucks. The Court stated "this increase in 'truck density' justifies the dimensional and weight restrictions of the statute in the interest of public safety and convenience and highway protection." (*Id.,* at 385.) And again, in *S.C. Hwy. Dept.* v. *Barnwell Bros., supra.,* this Court highlighted the special local concern implicit in highway safety regulation and stated, "Few subject of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulations of which is so inseparable from a substantial effect on interstate commerce . . . . The state has a primary and immediate concern in their safe and economical administration." (*Id.*, at 187.) Relying upon this "primary and immediate concern" of South Carolina, this Court declined to interfere with State's efforts to regulate truck sizes and weights even though the State's efforts would necessarily divert heavier, wider trucks from South Carolina highways onto the highways of neighboring States. Although the Eighth Circuit has erred in applying the *Raymond* decision in this case, as will be discussed later, it is quite clear, however, even *Raymond* does not limit the public safety benefits to be taken into account to so-called "direct" safety measures. No appropriate basis exists for the lower court's distinction between direct versus indirect safety objectives (See J.S. App. 9a and 10a). This objection to that distinction is particularly proper where alternative transportation exists, especially where the alternative of railroad operations and trailer-on-flat-car (piggyback) operations exist. In *Sproles* v. *Binford, supra,* at 394,

the Court recognized the appropriate perspective, a perspective which the court below ignored. That perspective is as follows:

> The State has a vital interest in the appropriate utilization of the railroads which serve its people, as well as in the proper maintenance of its highways as safe and convenient facilities. The State provides its highways and pays for their upkeep. Its people make railroad transportation possible by the payment of transportation charges. It cannot be said that the State is powerless to protect its highways from being subjected to excessive burdens when other means of transportation are available. The use of highways for truck transportation has its manifest convenience, but we perceive no constitutional ground for denying to the State the right to foster a fair distribution of trafic to the end that all necessary facilities should be maintained and that the public should not be inconvenienced by inordinate uses of its highways for purposes of gain.

The courts below have been persuaded by appellee's allegations of undue burden. The record, however, makes clear that Consolidated Freightway's enjoys substantial profits from its intercity freight operations, that 55-foot semi-trailers and 60-foot double-bottoms are available and are used by Consolidated Freightways, and that, in addition to the operations of Consolidated Freightways, a substantial number of equally profitable competitors exist among the Class I motor common carriers. In view of this record in this case, the Eighth Circuit has erred by automatically excluding from its inquiry the public benefits from a reduced traffic flow as additional factors pertinent to the public safety issue.

Another obvious shortcoming of the decision below is that it places no boundary upon the factual expertise highway officials will necesarily be required to generate in the future. All vehicle length limitation are suspect once placed in issue by a motor carrier initiating litigation. This result arises form the Eighth Circuit's reading of this Court's decision in *Raymond, supra.* The Eighth Circuit would require a State to go forward and to demonstrate by the weight of evidence

presented at trial that an asserted safety justification is substantive. (J.S. App. 7a) The application of the Eighth Circuit's requirement will mean that the vehicle length restrictions of each State are suspect because conclusive, documentary evidence may not be available or may not sufficiently refute the self-serving studies compiled by highway interests. Such a result was hardly intended by this Court in the *Raymond* decision. Rather, the Court noted with approval in that decision the well-established principle that a strong presumption of constitutionality attaches to State safety regulations. *(Id.*, at 443 and 444, citing *Bibb* v. *Navajo Freight Lines, 359 U.S. 520 (1959), Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970), and *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761 (1945). This presumption does not survive the decision below.

The court below has asserted that its holding "in no way endorses a lowest common denominator approach" to highway safety. (J.S. App. 10a.) Given its construction of *Raymond,* however, it is indeed difficult to predict any different result. Under the Eighth Circuit's reading, a truck configuration or length operated in interstate commerce on the interstate highways of one or more States acquires a presumption of safety in the absence of documentary evidence or some conclusive expression of expertise to the contrary. Quite clearly in the opinion of the Association, this is not what the Court mandated in voiding the Wisconsin laws in *Raymond.* The Court has held that scientific detail and documentation are not required where a State's police powers are involved. In *Sproles* v. *Binford, supra,* the Court appropriately declared, "to make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government . . . ." (*Id.*, at 388.) In *S.C. Hwy. Dept.* v. *Barnwell Bros., supra,* the Court observed with regard to the factual matters in dispute that "scientific precision is not the criterion for the exercise of the constitutional regulatory power of the st ates." (*Id.*, at 195, citing *Sproles* v. *Binford, supra.*) The decision of the Eighth Circuit is contrary to these prior holdings of the

court and is neither required by, nor consistent with, the court's decision in *Raymond, supra.*

In *Raymond,* the court stated that the question of legitimate highway safety regulations is reflected in the comparable tests set out in *Bibb, supra,* and *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). (*Raymond, supra* at 443.) Neither of the cited decisions mandates the result reached by the Eighth Circuit. In *Bibb, supra,* the Court struck down on constitutional grounds an Illinois highway law that required trucks operating within the State to be equipped with so-called "contour" mudguards, a new device not common to motor carrier operations in general. In declining to recognize the mudguards as legitimate State safety measures, the Court characterized its decision as one of those cases "few in number"where highway safety regulation is unreasonable. *Bibb, supra* at 529. See also the opinion of Justice Blackman in *Raymond, supra* at 448. The nature of the asserted burden in Iowa is wholly different from that in *Bibb.* Unlike the situation in the 1959 decision, Iowa's 60-foot limitations is not a new or innovative device as was the "contour" mudguard; rather Iowa's truck lengths restrictions extend back to 1963, a time when the interstate highway system as it exists today was developing. Similarly distinct from the *Bibb* situation, the challenged Iowa length restrictions are part and parcel of a comprehensive scheme of highway vehicle restrictions. Although the motor carrier industry would seek to bring itself within the narrow holding in *Bibb* by isolating and challenging only one length limitation, in one State at a time, and only as that limitation as pertains to interstate highway operations, the broad effect of the motor carrier's challenge should be clearly recognized. The district court below has specifically noted the propensity of motor carriers to leapfrog their way past highway size and weight restrictions. (J.S. App. 27a.) Further, as distinct from *Bibb,* the burdens claimed by Consolidated Freightway are attributable largely to the internal corporate decision to invest 65-foot double-bottom equipment rather than 55-foot semi-trailer or 60-foot double-bottom equipment.

III. Iowa's restrictions on truck lengths do not unreasonably burden interstate commerce.

1. *The Court's decision in Raymond is not controlling.*

By its own admonition in *Raymond Motor Trans. Inc.* v. *Rice, supra,* the Court clearly indicated that its holding was not to be construed as a measure of the propriety of a 55-foot truck length limitation or of the truck configuration limitation of States other than Wisconsin, *id.*, at 447. The Court went to great lengths to note that its decision turned on the record before the Court and the State's default on the question of any safety justification.[14] The courts below have recognized that a vigorous defense on the question of safety justification has been presented by Iowa. (J.S. App. 5a and 20a.) Beyond this distinction, the Iowa restrictions as well as Iowa's administration of the highway regulations differ factually from those matters under scrutiny in *Raymond, supra.* Thus, in the case now pending, a facutally different question of public safety concern has reached the Court on a distinctly different record from that compiled in the *Raymond* litigation. In view of these distinctions, the appellee errs in urging the Court to apply the holding of *Raymond* to the challenged Iowa restrictions, and the courts below have erred in concluding that the matters presented in this case cannot be meaningfully distinguished from those presented in *Raymond.*

2. *Iowa's substantive concerns of highway safety far exceed the purported burdens upon commerce.*

This Court has long recognized that even in the absence of any Federal legislation, the Commerce Clause remains

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[14] In *Raymond Motor Trans. Inc.* v. *Rice, supra,* the Court observed that Wisconsin made no effort to contradict the motor carrier evidence on the question of safety (*id.*, at 437) nor the motor carrier allegations of disrupted trucking operations (*id.*, at 438), that Wisconsin virtually defaulted in its defense of the challenged regulations (*id.*, at 444), and that no evidence contradicted the contention of substantial burdens the movement of goods (*id.*, 445).

available to protect against unwarranted State intrusions into the legitimate ends of free commerce among the States. *Cooley* v. *Board of Wardens*, 12 How. 299 (1851), *Southern Pacific* v. *Arizona ex rel. Sullivan*, 325 U.S. 761 (1945). Further this Court has frequently recognized and characterized its role under the Commerce Clause as that of the final arbiter of the competing demands of State and National interests. (*Id.*, at 769.) In the absence of undue discrimination against interstate commerce, however, a party challenging a State regulation must demonstrate far more than merely an adverse effect on interstate commerce, particularly where matters of public safety are involved. *Bibb, supra, S.C. Hwy. Dept.* v. *Barnwell Bros., supra; Maurer* v. *Hamilton, supra, Sproles* v. *Binford, supra.* And among these matters of public safety, this Court has declared that in no field has the Court's deference to State regulation been greater than the field of highway safety. *Hendrick* v. *Maryland,* 235 U.S. 610 (1915); *Sproles* v. *Binford, supra; Maurer* v. *Hamilton, supra; Railway Express Agency, Inc.* v. *New York,* 336 U.S. 106 (1949). In its recent *Raymond* decision, the Court acknowledged this special deference to highway safety and recognized that highway regulations which do not discriminate against interstate commerce typically place their burdens upon the local commercial interests as well as national commercial interests and thus are subject to check by a State's own political processes. Additionally, the special deference is also justified by the State's primary responsibility for highway construction, maintenance, and policing and by the wide disparity in highway conditions from State to State. *Raymond, supra,* at 444.

The Eighth Circuit has departed, however, from the traditional tests this court has employed in evaluating State highway safety regulations. The Eighth Circuit's reasoning is not justified by these traditional tests nor even by the decision in *Raymond.* Rather, the Eighth Circuit has engaged in second guessing the legislature, a practice this court has held to be inappropriate in highway safety matters. See *Sproles* v.

Binford, supra, and *S.C. Hwy. Dept.* v. *Barnwell Bros.* The proper role for the courts below should have been an inquiry limited to determining only whether the State regulation was evenhanded and whether the safety justification was substantive and not illusory. The result reached by the courts below departs from the prior decision of this Court.

Neither does the decision in *Pike* v. *Bruce Church, Inc., supra,* require the result reached by the Eighth Circuit. In *Pike* v. *Bruce Church, Inc.* the Court was presented with a challenge to Arizona's produce regulations which required that Arizona-grown cantaloupes be marketed in packaging conforming to the requirements of the Arizona Fruit and Vegetable Standardization Act. In adopting a test by which to evaluate the challenged regulation, the Court specifically stated that the questions before it did not involve State restrictions in the field of public safety where deference to the State authorities has long been recognized (*Id.,* at 143). Thus in *Pike* v. *Bruce Church, Inc.* the presumption of constitutionality which attaches to State regulation over matters not subject to Congressional action was not as strong as the presumption underlying highway safety matters.

To the same effect, a number of other decisions applying the balancing test set out in *Pike* v. *Bruce Church, Inc.,* have not presented questions where in the supporting record demonstrates substantial public safety concerns. In *Great A&P Tea Co.* v. *Cottrell,* 424 U.S. 366 (1976), the question before the court involved a Mississippi law conditioning the marketing of out-of-state milk and milk products upon reciprocity agreements by other States. The agreements were designed to assure that comparable marketing privileges were received by Mississippi milk producers and, as the court observed *(Id.,* at 375) did not protect milk quality standards. In *Hughes* v. *Alexandria Scrap Corp.,* 426 U.S. 794 (1976), the court was presented with a challenge to a Maryland law which interfered with the transfer and processing of abandoning automobile hulks by scrap iron dealers. Public safety was not at issue. And in *Hunt* v. *Washington Apple Advertising*

Comm'n., 432 U.S. 333 (1977), the court addressed constitutional objections asserted against a North Carolina law requiring that all apples marketed with the State, if graded, conform to applicable U.S. grading standards. While each of the regulations challenged in these cited decisions involved legitimate State concerns, none of the questions presented for the court involved safety considerations as fundamental as highway vehicle size or weight restrictions. The Court, therefore, should not look to these decisions to control its evaluation of Iowa's truck length restrictions.

If the Eighth Circuit's decision is upheld, the Court will have placed itself squarely in the business of monitoring State truck length limitations. Such a result is inconsistent with the traditional notion that precise length limitations are a matter for legislative not judicial determination where safety considerations exist. Indeed, the prior decisions of this Court in *S.C. Hwy. Dept.* v. *Barnwell Bros.* and in *Fireman* v. *Chicago, R.I.&.P.R. Co.*, 393 U.S. 794 (1968) require that as a policy matter such safety concerns be left to the State legislature, at least until the time Congress might act. If this Court should choose to depart from its prior decisions and to step into the business of setting permissible truck sizes or truck weights, the Association believes a proper result would be a reduction rather than an increase in permissible limits. However, given the complexity and inconclusiveness of the evidence compiled in this litigation on the question of safety and on the question of burdens upon commerce, it is clear that the legislature and not the judiciary is better equipped to establish permissible limitations.

CONCLUSION

For the reasons above, the decision of the Eighth Circuit should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1320

RAYMOND KASSEL, ET AL., *Appellants,*

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, A Delaware Corporation, *Appellee.*

On Appeal from the United States Court of Appeals for the Eighth Circuit

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CERTIFICATE OF SERVICE

I hereby certify that the Motion for Leave to File a Brief *Amicus Curiae* and the Brief of the Association of American Railroads as *Amicus Curiae* have been served upon the parties by mailing three copies each, this 8th day of July, 1980, to their respective counsel, as follows:

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